

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES  
Ninth Session

Working Party II on Tariffs,  
Schedules and Customs Administration

## PROGRESS REPORT BY THE CHAIRMAN OF WORKING PARTY II

Working Party II was assigned the task of considering the proposals relating to tariff schedules (including Articles XXVIII and XVIII A), procedures for tariff reduction, most-favoured-nation treatment and customs administration. The Working Party was also asked to undertake an examination of items 4 and 5 on the Ninth Session Agenda, namely "Plans for Tariff Reduction" and "Status of Schedules after 30 June 1955". Thus the tasks assigned to the Working Party may be classified in five categories:

- I. proposals relating to the modification of schedules (Articles XVIII A, XXVII and XXVIII);
- II. the status of the schedules after 30 June 1955;
- III. proposals to insert in the Agreement an obligation to negotiate for the reduction of tariffs, and questions relating to future work in connection with plans for tariff reduction;
- IV. Proposals relating to most-favoured-nation treatment, preferences, national treatment, etc. (including Articles I, II, III, XIX and XXIV); and
- V. proposals affecting or relating to the so-called technical Articles of the Agreement, i.e. Articles V to X.

The work done thus far in the examination of these issues is summarized in the following paragraphs.

### I. MODIFICATION OF SCHEDULES

The proposals affecting Articles XXVII, XXVIII and XVIII A were discussed in the Working Party on the basis of Section I of document W.9/19 and later working papers submitted by delegations, and were then referred to a sub-group (II-A). On 17 December the Working Party heard a statement by the Chairman of the sub-group (W.9/107), and had a further discussion of the problems involved.

Thus far, attention has been given particularly to Article XXVIII, and it seems that a divergence of views persists mainly on the following fundamental questions:

- (i) Are the concessions provided for in the schedules to be bound against increase for an indefinite period (except when special authority to renegotiate is obtained from the CONTRACTING PARTIES)? Or is the assured life of the schedules to be prolonged from time to time, as in the past, for such fixed periods as the CONTRACTING PARTIES may determine?

Several delegations wish to avoid the uncertainty and the pressures for increased protection on bound items which have hitherto been experienced towards the end of each period of firm validity. They propose to replace the negotiation procedures of the present Article XXVIII by arrangements for authority from the CONTRACTING PARTIES to renegotiate specified concessions as need may arise. Many others, however, would prefer to continue with periodic extensions of the assured life, with opportunities for free recourse to the negotiation procedures of the present Article XXVIII at the end of each period.

- (ii) Should the right of unilateral withdrawal in the event of failure to reach agreement in a negotiation be retained? Or should this be replaced by arrangements for arbitration by the CONTRACTING PARTIES?

Some delegations would give the CONTRACTING PARTIES the final word so that their determination would have to be accepted by both sides. Others envisage merely the reference of the point of difference to the CONTRACTING PARTIES in the hope that their intervention would lead to agreement being reached while the parties participating in the negotiation would retain freedom, the one to withdraw the concession and the other to retaliate.

- (iii) Which contracting parties should have the right to participate in a negotiation on the modification of a concession: the contracting parties to which the concession was granted in negotiation, the contracting parties which are now the principal suppliers, or both?

Some delegations maintain that a country to which the concession was granted, having given a concession in its own tariff in exchange, should be granted a new concession to replace the one that is being withdrawn. Contracting parties which acceded to the Agreement, at the second or third round of negotiations maintain that they were required to take into account the indirect benefits of the existing schedules and therefore all substantially interested countries should have the right to participate. Others, drawing attention to the changes that may have taken place in the channels of trade in the course of time, say that the countries principally interested on the basis of current trade are the ones that should be compensated.

These are the three principal problems to be solved in connection with Article XXVIII, but two others must also be mentioned. It has been suggested that provisions should be made for emergency action allowing a contracting party in certain urgent circumstances to modify a concession at any time without prior approval and without negotiation, provided it submits its case subsequently and compensates those interested in the trade. Secondly, it is not yet clear whether the procedures in paragraph 1 need be modified in the event that some "sympathetic consideration" procedure is written into the Article.

On the other hand, it should be noted that the Working Party and the sub-group, in studying the "sympathetic consideration" procedure which might be added to Article XXVIII, has found common ground on a number of issues, although it must be understood that no delegation has accepted any final commitment. It seems to be generally agreed, for example, that the concept of "exceptional circumstances" should be retained though without attempting to define the circumstances which the CONTRACTING PARTIES should regard as exceptional. It seems to be agreed also that negotiations under these procedures should be conducted with a view to maintaining the level of concessions, i.e., adjustments should be made by compensation in the schedule of the applicant country rather than by the withdrawal of concessions from other schedules. Thirdly, that the arrangements for the negotiations and for decisions by the CONTRACTING PARTIES should be speeded up so that the process of bringing about a modification of rates would not be unduly protracted.

As a last comment on the problems connected with Article XXVIII, it should be underlined that several delegations reserve their position on these questions awaiting the results of the discussion on the special needs of the less-developed countries in this field. The Working Party has had only a preliminary discussion whether provisions should be made for the renegotiation of bound items in order to promote economic development. Whether such special provisions will prove to be necessary will depend upon the decision on the renegotiation facilities to be available to all contracting parties in Article XXVIII, but it seems to be generally accepted that if provisions of this kind are to be retained they should be in Article XVIII.

When examining the secretariat draft for a revised Article XVIII the Working Party will have to consider whether the proposed facilities should be available for the development of existing industries as well as for the establishment of new industries. On this point the conclusions and recommendations of Working Party I will have to be taken into account. The representative of Brazil has proposed that compensatory adjustments should not necessarily be granted in exchange for release from a tariff binding. Many members are concerned that the time limit of sixty days for negotiations is too long, while others consider the period may be too short. Other questions which may have arisen in the examination of "sympathetic consideration" procedures for Article VIII, for example whether substantially interested contracting parties should be entitled to participate in negotiations, will have to be considered also in relation to Article XVIII A. These questions have been referred to a sub-group (II-A), but have not yet been studied.

A few amendments have been proposed to Article XXVII. There again the problem arises whether third countries have acquired certain rights through the "multilateralization" of the schedules. The Working Party has recently received a paper from the German delegation on this point (L/261/Add.1/Corr.1).

## II. STATUS OF THE SCHEDULES AFTER 30 JUNE 1955

Whereas the issues discussed in Section I relate to the amendment of Article XXVIII, the question of the status of the schedules after next June is an immediate problem. There appears to be a general willingness to extend the assured life of the schedules for two or three years, or at least until the amended provisions enter into force. But a great many of the contracting parties have indicated that they wish to negotiate the modification of some items in their schedules before signing a declaration prolonging their firm validity and that they are not willing to forego the right of unilateral withdrawal in the event of failure to reach agreement which they enjoy under paragraph 2 of Article XXVIII. Other delegations have indicated that they consider the continued binding one of the most important achievements of the GATT, and have expressed concern lest requests for a large number of modifications provoke a widespread demand by industries for tariff increases; therefore they hope that there will be nothing in the form of a set of negotiations for the withdrawal of concessions under the Article XXVIII procedures.

This issue has been discussed in the Working Party, but it does not seem possible to ascertain what the most appropriate solution would be until those delegations which have indicated that they wish to modify some of their concessions are able to state more precisely the character and scope of their needs. Some have indicated that they wish to adopt a new nomenclature for the whole of their tariff; but this can be done under the usual rectification procedures. Others have spoken of converting their specific into ad valorem duties, and concerning this question there is at the moment a Working Party report awaiting consideration by the CONTRACTING PARTIES. Apart from these two questions, it appears that the proposed modifications fall into two categories: a few countries wish to undertake an adjustment of their tariff system, including modernization and increased protection mainly in the industrial sector, while many others may wish to modify a limited number of items.

Some of these delegations wish to enter into negotiations in the early months of 1955 in order that the changes can be made effective on 1 July when the new binding would take effect. Some, however, would not be ready to negotiate or to complete the negotiations before July, and, therefore, wish their acceptance of the Declaration extending the firm validity of the schedules to be applicable to their schedules as modified after the completion of the negotiations envisaged.

It seems to be in the interests of all contracting parties (not forgetting that many of them will participate in the negotiations with Japan in February) that the position should be clarified as early as possible so that the CONTRACTING PARTIES can reach a decision by the end of the Ninth Session. It would be helpful,

therefore, if each contracting party which has indicated a desire to have recourse to Article XXVIII procedures for renegotiation, including the right of unilateral withdrawal, would review its situation carefully and determine the exact extent to which it will be necessary to use these procedures before accepting the commitment of a prolongation, taking into account that the "sympathetic consideration" procedure is also available.

### III. PROPOSALS FOR TARIFF REDUCTION

#### - The insertion in the Agreement of an obligation to negotiate

Under this heading, the Working Party considered the proposals by the Scandinavian, Benelux and German Governments summarized in W.9/26. The representatives proposing these amendments maintained that the important objective stated in the Preamble should be covered by an article. The Scandinavian Governments proposed that this could be done by introducing provisions similar to those contained in Article 17 of the Havana Charter, and by including the principle that the binding of low duties or of duty-free treatment should be recognised as equivalent to the reduction of high duties. The Benelux Governments proposed that the Agreement should include an undertaking to reduce customs duties deemed to be an obstacle to the development of trade. And the German Government suggested that the CONTRACTING PARTIES should endeavour to reach an understanding on the procedure for the collective automatic reduction of tariffs whereby an equalization of tariff incidences could be attained.

There was general understanding in the Working Party of the problems of the low-tariff countries, but some uncertainty was expressed as to the meaning and effect of an obligation to negotiate. It was recognized that tariffs should be considered as the legitimate and proper means of affording protection, and that important results had been achieved during the three rounds of negotiations. But many doubted whether new obligations could be undertaken, especially if the GATT rules on other obstacles to trade were strengthened. Some representatives declared that a further reduction of tariffs would raise serious problems in connection with revenue from fiscal duties. It was also proposed that arrangements for further tariff reduction should not be provided for in the Agreement itself.

Against these arguments the representatives of low-tariff countries maintained that, for them, further progress in the tariff field was a basic issue. Their attitude to the Review as a whole and to the question of future rebindings - by which, in their opinion, an unbalanced situation was stabilized - was dependent on a positive outcome of the Review discussion in this field. This had been clearly indicated in the statements by their ministers' representatives at the beginning of the Session.

In the light of these statements, several representatives declared themselves willing to undertake further study of the problems and indicated that a compromise solution might be found by inserting an article in which the obligation to negotiate would be recommendatory rather than mandatory and which would underline

the principle of mutual advantage, reciprocity, etc. At a recent meeting of the Working Party these matters were further explored. After hearing a statement by the United States delegation (reproduced in W.9/108), the Netherlands representative indicated his willingness to submit to the Working Party, after consultations with other interested delegations, a new proposal which may serve as a basis for further study.

#### B. Plans for tariff reduction

In the light of the declaration by some governments that they were prepared to participate in a tariff negotiation based on the principles of the report adopted at the Eighth Session (BISD, 2nd Supplement, p. 68), the Working Party considered what steps could be taken in the near future with a view to positive action in this field.

Some members declared that it would not be possible for them to take part in further work and that they would prefer that possible future negotiations follow the procedures used in the three earlier rounds. Several others felt that little useful work could be done until the attitude of some of the major trading nations, in particular the United States of America, is known. Other members, and especially those representing low-tariff countries, pressed for immediate further progress, and suggested that machinery should be established to carry the work forward. They admitted, however, that in the technical field little useful work could be done, if there was no agreement on the principles involved in this approach to the problem. In the opinion of some representatives, the matter could be referred to the Intersessional Committee, while others, taking into account the general lack of enthusiasm in the Working Party, felt that all that could be done would be to keep the matter on the agenda for further discussion at the Tenth Session. Here again, in the light of a recent discussion in the Working Party, mentioned above, the Netherlands representative has offered to table a definite proposal for study by the Working Party.

#### IV. PROPOSALS AFFECTING MOST-FAVOURED-NATION TREATMENT, PREFERENCES, ETC.

Numerous proposals have been submitted by contracting parties and by the secretariat on Articles I, II, III, XIX and XXIV (cf. W.9/45). In connection with Article I, the Working Party has so far studied mainly those which affect the right to maintain existing preferences and the no-new-preference rule. These proposals have been examined in the light of the fact that the provisions of Article I cannot be amended except by unanimity.

The most far-reaching proposal was that put forward by the representative of Brazil, who suggested the deletion of paragraph 2 of Article I in order to bring about the abolition of all customs preferences. It was clearly indicated in the course of this discussion that some delegations would oppose any such proposal, and since it therefore had no chance of acceptance it was withdrawn.

Three other proposals would involve new preferences or increased margins of preference, and these have been examined by a sub-group (II-B). On 17 December the Working Party was informed by the Chairman of the sub-group (W.9/114) of its conclusions on Chile's proposal that under-developed countries should be enabled to introduce new preferential arrangements to promote economic development on the lines of Article 15 of the Havana Charter, on Australia's proposal that a contracting party should be enabled to increase preferential margins if satisfactory compensation is given to all interested parties, and on New Zealand's proposal that Article I should not prevent "minor and inconsequential" increases in margins which may result from the adjustment of duties and other charges on imports. The sub-group has proposed that these questions should be dealt with by the submission of requests under Article XXV:5(a) for waivers of obligations of Article I rather than by amendment of the Agreement or by the insertion of interpretative notes.

The other questions arising in connection with Articles I, II and III have been discussed by the Working Party and have been sent to a sub-group (II-B). The more important amongst these are:-

- (a) the use of tariff descriptions as a means of discrimination between products of various countries;
- (b) the possibility of defining the term "like product";
- (c) clarification of the text of Article II:1 in relation to charges on the international transfer of payments for imports;
- (d) the factors to be taken into account under Article II:6(a) when examining the adjustment of specific duties following devaluation of a currency; and
- (e) the conversion of specific rates of duty to an ad valorem basis.

The Working Party has also considered proposals for the amendment of Article XIX. Some delegations think that greater flexibility might be given to the provisions of this Article by allowing emergency action, even when no increase in imports of a product has taken place. The Scandinavian delegations received some support for their opinion that the use of emergency action should be subject to more strict limitations, and that the new Organization should be given greater authority in some respects. Other delegations, however, felt that the balance struck in the present Article should not be changed. These problems are at present under study in a sub-group (II-B), which is also studying some proposals to amend Article XXIV.

V. THE TECHNICAL ARTICLES

At one of its first meetings the Working Party appointed a Technical Group to examine questions affecting customs administration. As a first task, it was instructed to examine the replies received from contracting parties to the questionnaire issued in September on methods of valuation. This Technical Group has made a careful analysis of the replies and has obtained supplementary information from delegations. The Group is preparing a factual statement on valuation methods which the Working Party will receive early in January. This statement will provide a background for the examination of the proposals for amendment of Article VII, which have also been referred to this Group.

The proposals affecting Article VI - Anti-Dumping and Countervailing Duties - have not yet been examined by the Working Party since they are closely related to questions of subsidies and state trading, which are being studied by Working Party III. Most of the proposals affecting Articles V, VIII, IX and X, as well as several proposals for the insertion of additional paragraphs and articles, have also been referred to the Technical Group. Other proposals affecting these Articles have been sent to Working Party IV because they deal mainly with the functions of the new organization in these fields.

